

By: Zaffirini

S.B. No. 1457

A BILL TO BE ENTITLED

1 AN ACT

2 relating to guardianships and the delivery of certain notices or
3 other communications in connection with guardianship proceedings.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 1002, Estates Code, is amended by adding
6 Section 1002.0265 to read as follows:

7 Sec. 1002.0265. QUALIFIED DELIVERY METHOD. "Qualified
8 delivery method" means delivery by:

9 (1) hand delivery by courier, with courier's proof of
10 delivery receipt;

11 (2) certified or registered mail, return receipt
12 requested, with return receipt; or

13 (3) a private delivery service designated as a
14 designated delivery service by the United States secretary of the
15 treasury under Section 7502(f)(2), Internal Revenue Code of 1986,
16 with proof of delivery receipt.

17 SECTION 2. Section 1023.004(c), Estates Code, is amended to
18 read as follows:

19 (c) If a court made a motion to transfer a guardianship, the
20 guardian shall be given notice by a qualified delivery method
21 ~~[certified mail]~~ to appear and show cause why the guardianship
22 should not be transferred.

23 SECTION 3. The heading to Section 1051.052, Estates Code,
24 is amended to read as follows:

1 Sec. 1051.052. SERVICE BY MAIL OR QUALIFIED DELIVERY
2 METHOD.

3 SECTION 4. Sections 1051.052(b), (c), (d), (e), and (f),
4 Estates Code, are amended to read as follows:

5 (b) Except as provided by Subsection (c), the county clerk
6 shall issue a citation or notice required or permitted to be served
7 by a qualified delivery method [~~registered or certified mail~~] and
8 shall serve the citation or notice by sending [~~mailing~~] the
9 original citation or notice by a qualified delivery method
10 [~~registered or certified mail~~].

11 (c) A guardian shall issue a notice required to be given by
12 the guardian by a qualified delivery method [~~registered or~~
13 ~~certified mail~~] and shall serve the notice by sending [~~mailing~~] the
14 original notice by a qualified delivery method [~~registered or~~
15 ~~certified mail~~].

16 (d) The county clerk or guardian, as applicable, shall send
17 [~~mail~~] a citation or notice under Subsection (b) or (c) with an
18 instruction to deliver the citation or notice to the addressee only
19 and with return receipt or other proof of delivery requested. The
20 clerk or guardian, as applicable, shall address the envelope
21 containing the citation or notice to:

22 (1) the attorney of record in the proceeding for the
23 person to be cited or notified; or

24 (2) the person to be cited or notified, if the citation
25 or notice to the attorney is returned undelivered or the person to
26 be cited or notified has no attorney of record in the proceeding.

27 (e) Service by regular mail or a qualified delivery method

1 must be made at least 20 days before the return day of the citation
2 or notice, excluding the date of service. The date of service [~~by~~
3 ~~mail~~] is the date of mailing, the date of deposit with the private
4 delivery service, or the date of delivery by courier, as
5 applicable.

6 (f) A copy of a citation or notice served under Subsection
7 (a), (b), or (c) and a certificate of the person serving the
8 citation or notice showing that the citation or notice was sent
9 [~~mailed~~] and the date of the mailing, the date of deposit with a
10 private delivery service, or the date of delivery by courier, as
11 applicable, shall be filed and recorded. A returned receipt or
12 other proof of delivery receipt for a citation or notice served
13 under Subsection (b) or (c) shall be attached to the certificate.

14 SECTION 5. Sections 1051.055(a) and (b), Estates Code, are
15 amended to read as follows:

16 (a) If a party is represented by an attorney of record in a
17 guardianship proceeding, including a proposed ward who has been
18 personally served with notice of the proceeding and is represented
19 by an attorney ad litem, a citation or notice required to be served
20 on the party shall be served instead on that attorney.

21 (b) A notice served on an attorney under this section may be
22 served by[+]

23 [~~(1)~~] delivery to the attorney in person or by a
24 qualified delivery method [+]

25 [~~(2)~~] ~~registered or certified mail, return receipt~~
26 ~~requested, or~~

27 [~~(3)~~] ~~any other form of mail that requires proof of~~

1 delivery].

2 SECTION 6. Section 1051.056, Estates Code, is amended to
3 read as follows:

4 Sec. 1051.056. SERVICE ON GUARDIAN OR RECEIVER. Unless
5 this title expressly provides for another method of service, the
6 county clerk who issues a citation or notice required to be served
7 on a guardian or receiver shall serve the citation or notice by
8 sending [~~mailing~~] the original citation or notice by a qualified
9 delivery method [~~registered or certified mail~~] to:

10 (1) the guardian's or receiver's attorney of record;
11 or

12 (2) the guardian or receiver, if the guardian or
13 receiver does not have an attorney of record.

14 SECTION 7. Sections 1051.104(a) and (b), Estates Code, are
15 amended to read as follows:

16 (a) The person filing an application for guardianship shall
17 send [~~mail~~] a copy of the application and a notice containing the
18 information required in the citation issued under Section 1051.102
19 by a qualified delivery method [~~registered or certified mail,~~
20 ~~return receipt requested, or by any other form of mail that provides~~
21 ~~proof of delivery,~~] to the following persons, if their whereabouts
22 are known or can be reasonably ascertained:

23 (1) each adult child of the proposed ward;

24 (2) each adult sibling of the proposed ward;

25 (3) the administrator of a nursing home facility or
26 similar facility in which the proposed ward resides;

27 (4) the operator of a residential facility in which

1 the proposed ward resides;

2 (5) a person whom the applicant knows to hold a power
3 of attorney signed by the proposed ward;

4 (6) a person designated to serve as guardian of the
5 proposed ward by a written declaration under Subchapter E, Chapter
6 1104, if the applicant knows of the existence of the declaration;

7 (7) a person designated to serve as guardian of the
8 proposed ward in the probated will of the last surviving parent of
9 the proposed ward;

10 (8) a person designated to serve as guardian of the
11 proposed ward by a written declaration of the proposed ward's last
12 surviving parent, if the declarant is deceased and the applicant
13 knows of the existence of the declaration; and

14 (9) each adult named in the application as an "other
15 living relative" of the proposed ward within the third degree by
16 consanguinity, as required by Section 1101.001(b)(11) or (13), if
17 the proposed ward's spouse and each of the proposed ward's parents,
18 adult siblings, and adult children are deceased or there is no
19 spouse, parent, adult sibling, or adult child.

20 (b) The applicant shall file with the court:

21 (1) a copy of any notice required by Subsection (a) and
22 the return receipts or other proofs of delivery of the notice; and

23 (2) an affidavit sworn to by the applicant or the
24 applicant's attorney stating:

25 (A) that the notice was sent [~~mailed~~] as required
26 by Subsection (a); and

27 (B) the name of each person to whom the notice was

1 sent [~~mailed~~], if the person's name is not shown on the return
2 receipt or other proof of delivery.

3 SECTION 8. Section 1051.153(b), Estates Code, is amended to
4 read as follows:

5 (b) Proof of service consists of:

6 (1) if the service is made by a sheriff or constable,
7 the return of service;

8 (2) if the service is made by a private person, the
9 person's affidavit;

10 (3) if the service is made by mail or by a qualified
11 delivery method:

12 (A) the certificate of the county clerk making
13 the service, or the affidavit of the guardian or other person making
14 the service that states that the citation or notice was mailed or
15 sent by a qualified delivery method and the date of the mailing, the
16 date of deposit with the private delivery service, or the date of
17 delivery by courier, as applicable; and

18 (B) the return receipt or other proof of delivery
19 receipt attached to the certificate or affidavit, as applicable, if
20 the service [~~mailing~~] was made by a qualified delivery method
21 [~~registered or certified mail and a receipt has been returned~~]; and

22 (4) if the service is made by publication:

23 (A) a statement that:

24 (i) is made by the Office of Court
25 Administration of the Texas Judicial System or an employee of the
26 office;

27 (ii) contains or to which is attached a copy

1 of the published citation or notice; and

2 (iii) states the date of publication on the
3 public information Internet website maintained as required by
4 Section 72.034, Government Code [~~as added by Chapter 606 (S.B.~~
5 ~~891), Acts of the 86th Legislature, Regular Session, 2019~~]; and

6 (B) an affidavit that:

7 (i) is made by the publisher of the
8 newspaper in which the citation or notice was published or an
9 employee of the publisher;

10 (ii) contains or to which is attached a copy
11 of the published citation or notice; and

12 (iii) states the date of publication
13 printed on the newspaper in which the citation or notice was
14 published.

15 SECTION 9. Section 1057.002(b), Estates Code, is amended to
16 read as follows:

17 (b) The resident agent shall send, by a qualified delivery
18 method [~~certified mail, return receipt requested~~], a copy of a
19 resignation statement filed under Subsection (a) to:

20 (1) the guardian at the address most recently known by
21 the resident agent; and

22 (2) each party in the case or the party's attorney or
23 other designated representative of record.

24 SECTION 10. Section 1104.103, Estates Code, is amended by
25 amending Subsections (a) and (b) and adding Subsection (a-1) to
26 read as follows:

27 (a) The surviving parent of an adult individual who is an

1 incapacitated person may, if the parent is the guardian of the
2 person or estate of the adult individual, by will or written
3 declaration appoint an eligible person to serve as guardian of the
4 person or estate, as applicable, of the adult individual:

5 (1) after the parent dies;

6 (2) in the event the parent resigns as guardian of the
7 person or estate; or

8 (3) in the event of the parent's incapacity.

9 (a-1) If the surviving parent is both the guardian of the
10 person and estate of the adult individual, the surviving parent may
11 by will or written declaration appoint different eligible persons
12 to serve as guardian of the person and guardian of the estate.

13 (b) After the surviving parent dies or resigns as guardian,
14 or if the court finds the surviving parent has become an
15 incapacitated person after being appointed the adult individual's
16 guardian, the court shall appoint the person or persons designated
17 in the will or declaration to serve as guardian of the person,
18 guardian of the estate, or both, in preference to any other person
19 otherwise entitled to serve as guardian under this title, unless
20 the court finds that the person designated to serve as guardian:

21 (1) is disqualified;

22 (2) is deceased;

23 (3) refuses to serve; or

24 (4) would not serve the adult individual's best
25 interests.

26 SECTION 11. Subchapter B, Chapter 1151, Estates Code, is
27 amended by adding Section 1151.0525 to read as follows:

1 Sec. 1151.0525. ACCESS AND MANAGEMENT OF WARD'S FUNDS BY
2 GUARDIAN OF PERSON. (a) This section applies only to the guardian
3 of the person of a ward for whom the court has not appointed a
4 guardian of the estate.

5 (b) On application to and order from the court, the guardian
6 of the person of a ward may access, manage, and spend the ward's
7 funds in an amount not to exceed \$20,000 per year for the ward's
8 benefit. The court shall require the guardian to file a bond.

9 (c) A guardian of the person shall include any expenditures
10 made for the benefit of the ward if authorized by court order under
11 Subsection (b) in the annual report required by Section [1163.101](#).

12 (d) When there is no longer a need for the guardian of the
13 person to access, manage, or spend the ward's funds, the guardian of
14 the person shall file a sworn affidavit of fulfillment with the
15 court. After the filing of the affidavit, the sureties on the bond
16 are automatically released from all liability for the future acts
17 of the guardian.

18 SECTION 12. Section [1153.001](#)(a), Estates Code, is amended
19 to read as follows:

20 (a) Within one month after receiving letters of
21 guardianship, a guardian of an estate shall provide notice
22 requiring each person who has a claim against the estate to present
23 the claim within the period prescribed by law. The notice must be:

24 (1) published in a newspaper of general circulation in
25 the county in which the letters were issued; and

26 (2) sent to the comptroller by a qualified delivery
27 method [~~certified or registered mail~~], if the ward remitted or

1 should have remitted taxes administered by the comptroller.

2 SECTION 13. Sections [1153.003](#)(b) and (c), Estates Code, are
3 amended to read as follows:

4 (b) Notice provided under this section must be:

5 (1) sent by a qualified delivery method [~~certified or~~
6 ~~registered mail, return receipt requested~~]; and

7 (2) addressed to the record holder of the claim at the
8 record holder's last known post office address.

9 (c) The following shall be filed in the court from which the
10 letters of guardianship were issued:

11 (1) a copy of each notice required by Subsection
12 (a)(1) with the return receipt or other proof of delivery, if
13 available; and

14 (2) the guardian's affidavit stating:

15 (A) that the notice was sent [~~mailed~~] as required
16 by law; and

17 (B) the name of the person to whom the notice was
18 sent [~~mailed~~], if that name is not shown on the notice or receipt.

19 SECTION 14. Section [1153.005](#)(a), Estates Code, is amended
20 to read as follows:

21 (a) A guardian of an estate is not required to give a notice
22 required by Section [1153.001](#) or [1153.003](#) if another person also
23 appointed as guardian or a former guardian has given that notice.

24 SECTION 15. Section [1155.002](#)(a), Estates Code, is amended
25 to read as follows:

26 (a) The court may authorize compensation for a guardian
27 serving as a guardian of the person alone from available funds of

1 the ward's estate or other funds available for that purpose. The
2 court may set the compensation in an amount not to exceed the
3 greater of \$3,000 per year or five percent of the ward's gross
4 income.

5 SECTION 16. Section 1156.052(c), Estates Code, is amended
6 to read as follows:

7 (c) A person who makes an application to the court under
8 this section shall send ~~mail~~ notice of the application by a
9 qualified delivery method ~~[certified mail]~~ to all interested
10 persons.

11 SECTION 17. Section 1162.003, Estates Code, is amended to
12 read as follows:

13 Sec. 1162.003. NOTICE OF APPLICATION FOR ESTABLISHMENT OF
14 ESTATE OR OTHER TRANSFER PLAN. A person who makes an application
15 to the court under Section 1162.001 shall send ~~mail~~ notice of the
16 application by a qualified delivery method ~~[certified mail]~~ to:

- 17 (1) all devisees under a will, trust, or other
18 beneficial instrument relating to the ward's estate;
19 (2) the ward's spouse;
20 (3) the ward's dependents; and
21 (4) any other person as directed by the court.

22 SECTION 18. Section 1162.006(b), Estates Code, is amended
23 to read as follows:

24 (b) Notice required by Subsection (a) must be sent
25 ~~[delivered]~~ by a qualified delivery method ~~[+~~

26 ~~[(1) registered or certified mail to a person~~
27 ~~described by Subsection (a)(1), and~~

1 ~~[(2) certified mail to a person described by~~
2 ~~Subsection (a)(2), (3), (4), or (5)].~~

3 SECTION 19. Section 1202.054(b-2), Estates Code, is amended
4 to read as follows:

5 (b-2) Not later than the 30th day after the date the court
6 receives an informal letter from a ward under Subsection (a), the
7 court shall send the ward a letter by a qualified delivery method
8 ~~[certified mail]~~:

- 9 (1) acknowledging receipt of the informal letter; and
10 (2) advising the ward of the date on which the court
11 appointed the court investigator or guardian ad litem as required
12 under Subsection (b) and the contact information for the court
13 investigator or guardian ad litem.

14 SECTION 20. Sections 1203.052(a-1) and (b), Estates Code,
15 are amended to read as follows:

16 (a-1) The court may remove a guardian for a reason listed in
17 Subsection (a) on the:

18 (1) court's own motion, after the guardian has been
19 notified~~[7]~~ by a qualified delivery method ~~[certified mail, return~~
20 ~~receipt requested,7]~~ to answer at a time and place set in the notice;
21 or

22 (2) complaint of an interested person, after the
23 guardian has been cited by personal service to answer at a time and
24 place set in the notice.

25 (b) In addition to the authority granted to the court under
26 Subsection (a), the court may, on the complaint of the guardianship
27 certification program of the Judicial Branch Certification

1 Commission, remove a guardian who would be ineligible for
2 appointment under Subchapter H, Chapter 1104, because of the
3 guardian's failure to maintain the certification required under
4 Subchapter F, Chapter 1104. The guardian shall be given notice~~[7]~~
5 by a qualified delivery method [~~certified mail, return receipt~~
6 ~~requested,~~] to appear and contest the request for removal under
7 this subsection at a time and place set in the notice.

8 SECTION 21. Section 1351.001(a), Estates Code, is amended
9 to read as follows:

10 (a) A parent or managing conservator of a minor who is not a
11 ward may apply to the court under this subchapter for an order to
12 sell an interest of the minor in property without being appointed
13 guardian if the net value of the interest does not exceed \$250,000
14 [~~\$100,000~~].

15 SECTION 22. Section 1351.052, Estates Code, is amended to
16 read as follows:

17 Sec. 1351.052. AUTHORITY TO SELL WARD'S INTEREST IN
18 PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE IN THIS
19 STATE. A guardian of the person of a ward or a guardian of the
20 person or estate of a ward appointed by a foreign court may apply to
21 the court under this subchapter for an order to sell an interest in
22 property in the ward's estate without being appointed guardian of
23 the ward's estate in this state if the net value of the interest
24 does not exceed \$250,000 [~~\$100,000~~].

25 SECTION 23. Section 1352.052(a), Estates Code, is amended
26 to read as follows:

27 (a) If the net value of a minor's interest in a residence

1 homestead does not exceed \$250,000 [~~\$100,000~~], a parent, subject to
2 Subsection (b), or managing conservator of the minor may apply to
3 the court under this subchapter for an order authorizing the parent
4 or managing conservator to receive on the minor's behalf, without
5 being appointed guardian, an extension of credit that is secured
6 wholly or partly by a lien on the homestead.

7 SECTION 24. Section [1352.102](#), Estates Code, is amended to
8 read as follows:

9 Sec. 1352.102. AUTHORITY TO MORTGAGE MINOR WARD'S INTEREST
10 WITHOUT GUARDIANSHIP OF THE ESTATE. If the net value of a minor
11 ward's interest in a residence homestead does not exceed \$250,000
12 [~~\$100,000~~], the guardian of the person of the ward may apply to the
13 court under this subchapter for an order authorizing the guardian
14 to receive on the ward's behalf an extension of credit that is
15 secured wholly or partly by a lien on the homestead.

16 SECTION 25. Section [1353.004](#), Estates Code, is amended by
17 adding Subsection (c-1) to read as follows:

18 (c-1) If the court finds that the ward's spouse fails to
19 comply with an order described by Subsection (c), the court may,
20 after notice and a hearing, order any third party or entity in
21 possession to deliver to the incapacitated spouse's guardian of the
22 estate the community property described by Subsection (c).

23 SECTION 26. Section [1355.001](#)(a), Estates Code, is amended
24 to read as follows:

25 (a) In this section, "resident creditor" means a person who:

- 26 (1) is a resident of this state; and
27 (2) is entitled to money in an amount that is \$250,000

1 ~~[\$100,000]~~ or less, the right to which is liquidated and is
2 uncontested in any pending lawsuit.

3 SECTION 27. Sections 1355.002(a) and (b), Estates Code, are
4 amended to read as follows:

5 (a) In this section, "creditor" means a person who is
6 entitled to money in an amount that is not more than \$250,000
7 ~~[\$100,000]~~ owing as a result of transactions in this state, the
8 right to which is liquidated and is uncontested in any pending
9 lawsuit in this state.

10 (b) This section applies only to a nonresident creditor who
11 is:

12 (1) a nonresident minor ~~[and has a nonresident~~
13 ~~guardian of the estate appointed by a foreign court];~~

14 (2) a nonresident person who is adjudged by a foreign
15 court to be incapacitated ~~[and has a nonresident guardian of the~~
16 ~~estate appointed by that court];~~ or

17 (3) the nonresident former ward of a guardianship
18 terminated under Chapter 1204 who has no legal guardian qualified
19 in this state.

20 SECTION 28. Section 1104.103(c), Estates Code, is repealed.

21 SECTION 29. (a) The changes in law made by this Act to the
22 following provisions of the Estates Code apply only to an action
23 filed or a guardianship proceeding commenced on or after the
24 effective date of this Act:

25 (1) Sections 1023.004(c), 1051.153(b), 1057.002(b),
26 1153.001(a), 1153.005(a), 1156.052(c), 1162.006(b),
27 1202.054(b-2), and 1353.004;

1 (2) Sections 1051.052(b), (c), (d), (e), and (f);

2 (3) Sections 1051.055(a) and (b);

3 (4) Sections 1051.056 and 1162.003;

4 (5) Sections 1051.104(a) and (b);

5 (6) Sections 1153.003(b) and (c); and

6 (7) Sections 1203.052(a-1) and (b).

7 (b) Section 1155.002(a), Estates Code, as amended by this
8 Act, and Section 1151.0525, Estates Code, as added by this Act,
9 apply to a guardianship created before, on, or after the effective
10 date of this Act.

11 (c) Sections 1351.001(a), 1351.052, 1352.052(a), and
12 1352.102, Estates Code, as amended by this Act, apply only to an
13 application for a court order filed on or after the effective date
14 of this Act. An application for a court order filed before the
15 effective date of this Act is governed by the law in effect on the
16 date the application was filed, and the former law is continued in
17 effect for that purpose.

18 (d) Sections 1355.001(a) and 1355.002(a) and (b), Estates
19 Code, as amended by this Act, apply only to a payment made by a
20 debtor on or after the effective date of this Act. A payment made by
21 a debtor before the effective date of this Act is governed by the
22 law in effect on the date the payment was made, and the former law is
23 continued in effect for that purpose.

24 SECTION 30. This Act takes effect September 1, 2023.